

1 Chief Judge Marsha J. Pechman  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 UNITED STATES OF AMERICA, ) NO. CR06-157MJP  
11 ) Plaintiff, )  
12 v. ) GOVERNMENT'S REPLY TO  
13 HENRY ROSENAU, ) DEFENSE RESPONSE TO STATUS  
14 ) REPORT  
Defendant. )

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16 COMES NOW the United States of America, by and through Jenny A. Durkan,  
17 United States Attorney for the Western District of Washington, and Marc A. Perez and Susan  
18 M. Roe, Assistant United States Attorneys for said District, and files this Reply to the  
19 Defendant's Response to the Status Report of the Mutual Legal Assistance Treaty request in  
20 the above entitled case. The defendant opposes the requested trial continuance necessary for  
21 the MLAT processing on the basis that the Canadian Court has not yet issued a Sending  
22 Order and, further, because the defendant "has not been afforded an opportunity to be heard  
23 by the court in British Columbia." *Response*, page 4. The defendant notes his objection to  
24 the production of Canadian evidence, in witness or other form. The Court asked for this  
25 Government Reply, which is intended to more fully explain the process.

26 The Office of International Affairs, Department of Justice, was consulted and has  
27 advised the undersigned of the following. OIA has been informed by the International  
28 Assistance Group, of Justice Canada, that this MLAT request has been approved by Justice

1 Canada. That means, that United States' request for the assistance meets Justice Canada's  
 2 criteria and law pursuant to the Treaty. Having met the Canadian legal threshold, Justice  
 3 Canada has sent out communications to the various agencies for their evidence, which  
 4 includes official records and testimony. In the case at bar, Justice Canada currently is  
 5 gathering the material requested pursuant to the MLAT and acting on the requested civilian  
 6 depositions.

7 The agencies contacted by Justice Canada will submit the records and testimony.  
 8 Once all requested evidence is assembled, a Canadian court will review the submissions in a  
 9 "Sending Hearing." Typically, that results in the Court issuing a Sending Order which  
 10 decrees the requested evidence be turned over to the petitioning country. Justice Canada,  
 11 pursuant to the Sending Order, releases the evidence to the U.S. Department of Justice.

12 The Court may, however, review certain aspects of the evidence and determine not to  
 13 release it to the petitioning foreign country. This, apparently is what occurred in the  
 14 Canadian case, *United States v. Schneider*, 2002 BCSC 1014, cited by the defendant.

15 OIA noted that how the Sending Hearing is conducted, whether a defendant appears,  
 16 what is presented, and what will be sent is governed solely by Canadian authorities and that  
 17 the United States has no role, whatsoever, in the matter.

18 Additionally, the Treaty is between countries and is designed for governments to  
 19 determine how and what governments will share internationally. The Treaty does not give  
 20 other entities standing in an MLAT request. "This Treaty is intended solely for mutual legal  
 21 assistance between the Parties. The provisions of this Treaty shall not give rise to a right on  
 22 the part of a private party to obtain, suppress or exclude any evidence or to impede the  
 23 execution of a request." *Exhibit 1*, MLAT Treaty, Article II, 4. "The article specifically  
 24 states that it is not intended to create rights in private parties either to gather evidence or  
 25 secure other assistance or to suppress or exclude in civil or criminal proceedings evidence  
 26 obtained under the Treaty." *Exhibit 2*, *Letter of Submittal*, page 2, lines 6 - 10. It appears  
 27 that, according to the terms of the Treaty, the defendant has no right "to be heard" at  
 28 Sending Hearing. Whether or not a Canadian court allows him to be heard is within the

1 Canadian court's power but the denial of such is not a basis for exclusion, in a United States  
2 trial, of the evidence obtained pursuant to the MLAT.

3 Therefore, the government agrees that no Sending Order has been issued yet. It is the  
4 final step which is anticipated. OIA has been assured that Justice Canada is moving forward  
5 on this request, knowing the trial is pending.

6 Once a Sending Order is issued, presuming it allows the requested evidence including  
7 depositions, the government will move promptly to arrange receipt of the evidence, to request  
8 this Court's Order allowing the Canadian depositions, and to take the necessary steps for the  
9 depositions (including obtaining country clearance). It is hoped that this can still be  
10 accomplished by late March. Therefore, the government renews its request that the trial be  
11 rescheduled for up to 30 days, in order to allow the Canadian legal process to proceed.

12 DATED this 22nd day of February, 2012.

13 Respectfully submitted,

14 JENNY A. DURKAN  
15 United States Attorney

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## CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Ryan Hebert  
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